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STANDING COMMITTEE ON DEFENCE (1996-97)

ELEVENTH LOK SABHA

MINISTRY OF DEFENCE

THE NAVY (AMENDMENT) BILL, 1997

SIXTH REPORT

LOK SABHA SECRETARIAT
NEW DELHI

July, 1997/Shravana, 1919 (Saka)

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STANDING COMMITTEE ON DEFENCE (1996-97)

(ELEVENTH LOK SABHA)

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THE NAVY (AMENDMENT) BILL, 1997

Presented to Lok Sabha on.....31 JUL 1997
Laid in Rajya Sabha on.....

LOK SABHA SECRETARIAT
NEW DELHI

July, 1997/Shravana, 1919 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON DEFENCE (1996-97)

Shri B.K. Gadhvi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh
3. Smt. Sushma Swaraj
4. Shri Banwari Lal Purohit
5. Shri Baburao Paranjpe
6. Lt. Gen. Shri Prakash Mani Tripathi
7. Shri Rajendra Agnihotri
8. Dr. Chhatrapal Singh
9. Dr. Vallabhbhai Kathiria
10. Shri Ram Chandra Benda
11. Shri Nihal Chand
12. Col. Sona Ram Choudhury
13. Dr. Mallikarjun
14. Shri Shivraj V. Patil
*15. Shri Rajesh Pilot
16. Shri P. Upendra
17. Shri P. Namgyal
18. Maj. Gen. Bikram Singh
19. Smt. Nisha Amarsinh Chaudhary
20. Shri H.D. Kumaraswamy
21. Shri Hannan Mollah

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*Ceased to be a Member w.e.f. 8.10.96.

22. Shri A. Sampath
23. Shri C. Narasimhan
24. Shri Pratap Singh
25. Shri T. Nagaratnam
26. Shri Raja Ram Parasram Godse
27. Shri Nitish Kumar
28. Shri Major Singh Uboke
29. Shri Madhavrao Scindia
*30. Shri Suresh Kalmadi
***31. Shri Bhanu Prakash Mirdha

Rajya Sabha

32. Shri Sushil Kumar Sambhajirao Shinde
33. Shri Peter S. Alphonse
34. Shri Lachman Singh
35. Shri Satchidananda
36. Shri Surendra Kumar Singh
37. Shri K.R. Malkani
38. Shri Satish Agarwal
39. Shri N. Thangaraj Pandian
40. Shri Adhik Shirodkar
41. Shri Suresh A. Keswani
**42. Prof. Ram Kapse

SECRETARIAT

1. Dr. A.K. Pandey — *Additional Secretary*
2. Shri V.N. Gaur — *Director*
3. Shri K.D. Muley — *Assistant Director*
4. Shri Pawan Kumar — *Committee Officer*

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* Nominated w.e.f. 8.10.96.
** Nominated w.e.f. 5.11.96
*** Nominated w.e.f. 26.2.97

INTRODUCTION

I, the Chairman, Standing Committee on Defence (1996-97) having been authorised by the Committee to submit the Report on their behalf, present this Sixth Report on the Navy (Amendment) Bill, 1997.

2. The Navy (Amendment) Bill, 1997 was introduced in Rajya Sabha on 12th March, 1997 and was referred to the Committee by the Hon'ble Speaker, in consultation with the Hon'ble Chairman, Rajya Sabha on 17th March, 1997 under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha for examination and report.

3. The Committee had briefing/presentation by the representatives of Ministry of Defence and also undertook clause-by-clause consideration of the Bill on 8th May, 1997 and adopted the same.

4. The Committee wish to express their thanks to the representatives of the Ministry of Defence for appearing before the Committee and for furnishing the material and information which the Committee desired in connection with the examination of the Bill. The Committee also wish to express their thanks to the representatives of the Ministry of Law and Justice for giving valuable assistance to the Committee in examination of the Bill.

5. The Report was considered and adopted by the Committee at their sitting held on 14th July, 1997.

NEW DELHI;
July 14, 1997
Asadha 23, 1919 (Saka)

B.K. GADHVI,
Chairman,
Standing Committee on Defence.

REPORT

The Government of India are responsible for ensuring the defence of the country and every part thereof. This responsibility is discharged through the Ministry of Defence, which provides the Policy framework, and wherewithal to the three Armed Forces *i.e.*, Army, Air Force and Navy. The constitution and regulation of Army, Air Force and Navy and their personnel are governed by the Army Act, 1950, the Air Force Act, 1950 and the Navy Act, 1957, respectively.

2. Since enactment in 1957, the Navy Act has been amended by Acts of 1970, 1974, 1982 and 1987 in keeping with the latest trends and to remove certain difficulties in its application. From the experience gained, over a period of time, the Government have felt the need to make some more changes in the existing provisions and also to incorporate certain new provisions in the Navy Act, 1957 (62 of 1957) through the Navy (Amendment) Bill, 1997 to make it more compatible with the civil and criminal laws of the country, and to plug certain loopholes.

3. The Committee have considered the background note and the clarifications given by the representatives of Ministry of Defence during briefing/presentation and clause-by-clause consideration of the Navy (Amendment) Bill, 1997.

Amendment of Section 3 (16)

4. It is proposed to bring re-employed commissioned officers within the scope of the definition of "officer".

5. The Indian Navy has, from time to time, to re-employ certain of its retired officers with a view to take advantage of their vast experience in their respective specialisations, and also to make good the overall shortages in the officer cadre. The re-employed officers are to be governed by the same terms and conditions as applicable to the regular entry commissioned officers. Likewise, they are also deemed to be subjected to the Navy Act, 1957 for the purpose of discipline and misconduct. The Ministry have stated that a slight ambiguity exists whether re-employed officers also fall within the definition of officers for subjecting them to the jurisdiction of the Navy Act, 1957 for the

purpose of discipline and misconduct, since there is no mention of the re-employed officers in the definition of the term "officer" contained in Section 3 (16) of the Navy Act, 1957. To clarify beyond any doubt that a re-employed officer is also an officer within the definition of Section 3(16) of the Navy Act, 1957, the Government propose to include re-employed officers in the definition of the term "officer".

Amendment of Section 79

6. It is proposed to exclude the time during which the offence committed under the Navy Act, 1957 did not come to the knowledge of the authority competent to initiate action or the aggrieved person and the time during which stay order from a court of law was in force, from the period of limitation (which is three years) for initiating proceedings, to prevent cases becoming time barred.

7. The existing Section 79 of the Navy Act, 1957 provides that no trial by court martial of any person subject to the Navy Act, 1957 can commence after expiry of a period of three years from the date of an offence committed by the individual, except when he is an offender who has avoided apprehension, or has fled from justice, or committed the offences of desertion or fraudulent entry, or the offence of mutiny.

It has been observed by the Government that in some cases, particularly of fraud etc., the truth surfaces after a considerable lapse of time. By the time a Board of Inquiry is instituted, a *prima facie* case is established, and Summary of Evidence is recorded in accordance with the provisions of the Navy Act, 1957 and regulations made thereunder to bring an accused person to trial by court martial, the case becomes time-barred because of the existing limitation period of three years. The Government, therefore, consider it necessary to make these provisions more flexible so that the culprit does not go scot free due to the limitation. The proposed amendment is aimed at bringing the Navy Act provisions in conformity with Section 469 of Cr. P.C. 1973, which excludes the time during which the offence did not come to the knowledge of the aggrieved person or of the competent authority, from being reckoned for the purpose of limitation. Further, in a given case, the offender may obstruct/delay the trial for a considerable period by obtaining a stay-order from a court of law, or drag the case beyond the limitation period of 3 years. There is also, therefore, a need to set off the period during which the offender delays the trials by obtaining a stay-order from a court of law. The Government, therefore, propose to amend Section 79 of the Navy Act, 1957 to bring it in consonance

with Section 469 of the Cr. P.C. 1973, and also to exclude from the limitation period of 3 years, the time during which any stay-order operates.

Amendment of Section 94

8. It is proposed to empower the Central Government/Chief of Naval Staff/Flag Officer Commanding-in-Chief of a Naval Command/ the commanding officer of a ship to impose penalty of mulcts (*i.e.* a deduction or a financial penalty by recovery) of pay and allowances for minor offences like unauthorised absence, etc. This will avoid the ordering of court martial for such minor offences.

9. Under existing Section 94 of the Navy Act, 1957, the Central Government, the Chief of the Naval Staff, the Flag Officer Commanding-in-Chief of a Naval Command and the commanding officer of a ship have been empowered to summarily try officers below the rank of commander, and to award the punishments of forfeiture of seniority in ranks, forfeiture of time for promotion, or a reprimand. They may award one or more of these punishments. However, they cannot try the minor offence of "absence without leave", as they have not been authorised to award mulcts of pay and allowances, along with one or more of above punishments. This punishment is mandatory under Section 51 of the Navy Act, 1957 for such offences. There is, therefore, no alternative left with the convening authority but to order court martial of the officer even for a minor offence of unauthorised absence which could otherwise be dealt with summarily. Ordering of the court martial for trivial offences of absence without leave is neither befitting the nature of the offence nor it is cost effective. An amendment to Section 94 of the Navy Act, 1957 is, therefore, proposed to be made to empower the authorities concerned to deal with such minor offences summarily.

Amendment of Section 133(6)

10. It is proposed to enlarge the scope of this sub-section for covering the reports of some more experts to be used as evidence in any proceeding under the Navy Act, 1957.

11. As per the existing sub-section (6) of Section 133 of the Navy Act, 1957, a report of any Chemical Examiner or Assistant Chemical Examiner to the Government can be used as evidence in any proceeding under the Act. However, in the trial under the Navy Act, 1957, reports

of the Chief Inspector of Explosives, the Director of Finger Print Bureau, the Director of Haffkeine Institute, the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory, and the Serologist to the Government, are also required to be used in evidence for offences of fraud, assault with dangerous weapon, murder, grievous hurt, sex related offences etc. Section 293(4) of the Cr. P.C. 1973 caters for the use of these reports in evidence. The Government, therefore, propose to amend Section 133(6) of the Navy Act, 1957 with a view to widen its scope and also to bring it in line with Section 293(4) of the Cr. P.C. 1973.

Amendment of Section 151

12. The period spent by an offender, under the Navy Act, 1957, in custody is proposed to be set off against imprisonment awarded to him.

13. At present Section 151(1) of the Navy Act, 1957 relating to the sentence does not cater for setting off the period of civil or Naval custody undergone by an offender during investigations pending his trial, whereas in accordance with Section 428 of the Cr. P.C. 1973, the period spent in custody by an offender is set-off against the imprisonment awarded to him. The Government, therefore, propose to bring the Navy Act, 1957 in conformity with Section 428 of the Cr. P.C. 1973 by adding sub-section (3) to Section 151 of the Navy Act.

Deletion of Section 163(1)(e) and Insertion of New Section 163(A)

14. The Flag Officers Commanding-in-Chief of Naval Commands are proposed to be vested with power to release a prisoner under the Navy Act, 1957 on parole.

15. The existing Section 163(1)(e) of the Navy Act, 1957 empowers the Central Government or the Chief of the Naval Staff to release a prisoner or a detenue on parole with or without conditions. No authority lower than the Chief of the Naval Staff is presently empowered to release a prisoner on parole. The Flag Officers Commanding-in-Chief of Naval Commands are also very senior officers of the Indian Navy holding the rank of Vice Admiral. The Government are of the opinion that by rank, status and position they are fit to exercise the authority to release prisoners and detenues on parole, for valid reasons. Vesting of these powers in them would curtail delays in taking approval of the Chief of the Naval Staff/Central Government and help in providing quick relief to deserving persons. It is, therefore,

proposed by the Government that the authority to release prisoners and detenues may also be vested with the Flag Officers Commanding-in-Chief of the Naval Commands. Accordingly, Section 163(1)(e) of the Navy Act, 1957 is proposed to be deleted and a new Section 163-A is proposed to be added in the Navy Act for this purpose.

Amendment of Section 176 (b)

16. The amount belonging to a deceased officer or sailor which can be disbursed without the production of exclusive evidence of title is proposed to be enhanced from ten thousand rupees to an amount not exceeding one lakh rupees which can be prescribed by way of rules.

17. Under the existing provision of Section 176(b), the prescribed person can deliver to the entitled person, the estate of any deceased officer or sailor, valued up to Rs. 10,000/- without requiring such a person to produce any conclusive evidence of title such as 'probates of will', letters of administration, succession certificates etc. With a view to provide relief in the event of untimely death of the individual, it is proposed to amend Section 176(b) of the Navy Act, 1957 to substitute the words 'ten thousand rupees' by the words 'the prescribed amount not exceeding rupees one lakh'. This will enable the Central Government to suitably enhance the amounts from time to time by amending the relevant rule without having to amend the Navy Act on each occasion of enhancement of the amount.

18. The addition proposed to be made in Section 184(2) of the Navy Act, 1957 is only consequential amendment.

Omission of Chapter XXII

19. Chapter XXII of the Navy Act, 1957 dealing with officers of the Royal Navy is proposed to be omitted.

20. Section 188 of the Navy Act, 1957 contains the transitory provisions to empower the officers of the Royal Navy to exercise the powers of the officers of the Indian Navy as after independence it was anticipated that some of the Royal Navy Officers might continue to serve in the Indian Navy. At present, no Royal Navy Officer serves in the Indian Navy nor is there any likelihood of their induction in the Navy. The Government, therefore, propose to delete these provisions from the Navy Act, 1957 as they are no longer relevant.

21. The Committee note that the Navy (Amendment) Bill, 1997 seeks to amend certain provisions of the Navy Act, 1957 (62 of 1957). Some of the proposed amendments are with a view to plug certain loopholes but others are to make the provisions of the Navy Act, 1957 more compatible with the present provisions of civil and criminal laws of the country.

The Committee adopt the Navy (Amendment) Bill, 1997 without any recommendation for amendment.

NEW DELHI ;
July 14, 1997
Asadha 23, 1919 (Saka)

B.K. GADHVI,
Chairman,
Standing Committee on Defence.

MINUTES OF THE TWELFTH SITTING OF THE STANDING COMMITTEE ON DEFENCE (1996-97)

The Committee sat on Thursday, the 8th May, 1997 from 1530 hours to 1630 hours.

PRESENT

Shri B.K. Gadhvi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Banwari Lal Purohit
3. Dr. Vallabhbhai Kathiria
4. Shri Ram Chandra Benda
5. Dr. Mallikarjun
6. Shri P. Namgyal
7. Shri Hannan Mollah
8. Shri A. Sampath
9. Shri C. Narasimhan
10. Shri Pratap Singh
11. Shri Nitish Kumar
12. Shri Bhanu Prakash Mirdha

Rajya Sabha

13. Shri Sushil Kumar Sambhajirao Shinde
14. Shri K.R. Malkani
15. Shri Adhik Shirodkar

SECRETARIAT

1. Shri V. N. Gaur — *Director*
2. Shri K.D. Muley — *Assistant Director*

REPRESENTATIVES OF THE MINISTRY OF DEFENCE

1. Shri T.K. Banerji	—	Defence Secretary
2. Shri Ashok Kumar	—	Addl. Secretary (A)
3. Shri K.G. Goel	—	Joint Secretary (Navy)
4. Shri S.L. Bunker	—	Director (CG)
5. Comde Sukhjinder Singh	—	JAG (Navy)

REPRESENTATIVES OF THE MINISTRY OF LAW & JUSTICE

1. Dr. V.K. Agarwal	—	Law Secretary
2. Dr. K.N. Chaturvedi	—	Joint Secretary (LC)
3. Shri T.K. Vishwanathan	—	Joint Secretary & Legislative Counsel
4. Dr. Sanjay Singh	—	Deputy Legislative Counsel

2. At the outset, the Chairman welcomed the Hon'ble Members, and the Defence Secretary, the Law Secretary & their colleagues to the sitting of the Committee and invited the attention of the representatives of the Ministry of Defence to the provisions contained in Directions 55 and 58 of the Directions by the Speaker, Lok Sabha. The Chairman informed the Members that representatives of the Ministry of Law and Justice had been invited to the sitting to assist the Committee in examination of the Navy (Amendment) Bill, 1997.

3. The representatives of the Ministry of Defence made a presentation on the Navy (Amendment) Bill, 1997. The Committee, thereafter, undertook clause-by-clause consideration of the Bill. During deliberations the representatives of the Ministry of Defence gave clarifications on various points raised by the Committee.

The Committee adopted the Bill without any recommendation for amendment. The Committee, however, desired that the Ministry of Defence should undertake a comprehensive review of the Navy Act, 1957 and bring a Bill to make amendments therein to meet present day requirements instead of making amendments in piecemeal from time to time.

4. The Chairman thanked the representatives of the Ministry of Defence for appearing before the Committee and freely and frankly sharing their views on matters concerning the Bill which came up for

discussion/consideration. The Chairman also thanked the representatives of the Ministry of Law & Justice for giving valuable assistance to the Committee in examination of the Bill.

5. A verbatim record of the proceedings was kept.

(The Witnesses then withdrew.)

The Committee then adjourned.

MINUTES OF THE THIRTEENTH SITTING OF THE STANDING COMMITTEE ON DEFENCE (1996-97)

The Committee sat on Monday, the 14th July, 1997 from 1000 hours to 1100 hours.

PRESENT

Shri B.K. Gadhvi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Banwari Lal Purohit
3. Shri Rajendra Agnihotri
4. Dr. Chhatrapal Singh
5. Dr. Vallabhbhai Kathiria
6. Shri Ram Chandra Benda
7. Shri Nihal Chand
8. Col. Sona Ram Choudhury
9. Dr. Mallikarjun
10. Shri Shivraj V. Patil
11. Shri Suresh Kalmadi
12. Shri P. Upendra
13. Shri P. Namgyal
14. Maj. Gen. Bikram Singh
15. Shri H.D. Kumaraswamy
16. Shri Hannan Mollah
17. Shri A. Sampath
18. Shri Pratap Singh
19. Shri T. Nagaratnam
20. Shri Nitish Kumar
21. Shri Major Singh Uboke
22. Shri Bhanu Prakash Mirdha

Rajya Sabha

23. Shri Sushil Kumar Sambhajirao Shinde
24. Shri Lachman Singh
25. Shri Satchidananda
26. Shri Surendra Kumar Singh
27. Shri Satish Agarwal
28. Shri Adhik Shirodkar
29. Shri Suresh A. Keswani
30. Prof. Ram Kapse

SECRETARIAT

1. Shri V.N. Gaur — *Director*
2. Shri K.D. Muley — *Assistant Director*

2. The Committee considered the draft Report on the Navy (Amendment) Bill, 1997 and adopted the same without any modifications/amendments.

3. The Committee authorised the Chairman to finalise the Report in the light of verbal and consequential changes and present the same to the Parliament.

The Committee then adjourned.